Technical Guidance

Pesticides Act and Ontario Regulation 63/09 Municipalities

May 2011

Purpose

This technical guidance provides regulatory information for municipal employees authorized to use pesticides in and around municipally owned or operated property. Ontario's cosmetic pesticides ban took effect April 22, 2009. The requirements of the ban are detailed in the Pesticides Act, which was amended by the Cosmetic Pesticides Ban Act, 2008 and in Ontario Regulation 63/09 (O. Reg. 63/09).

Update

Subsection 74(3) of O. Reg. 63/09 specifies that as of April 22, 2011, warning signs (i.e. Sign D and F) can no longer deviate from the versions of the signs referred to in subsection 1(5) of O. Reg. 63/09. In other words, if warning signs are required to be posted to provide public notice of a land extermination, the law requires that the version of the warning signs posted on the MOE's website be used.

Classification of pesticides

A pesticide product must be registered by Health Canada's Pest Management Regulatory Agency and classified by the Ministry of the Environment (MOE) to be sold and used in Ontario (please refer to s.6 of the Pesticides Act and s.9 of O. Reg. 63/09). Products must be used according to label directions and for purposes allowed under the ban.

As set out in subsection 4(5) of O. Reg. 63/09, Ontario has established a pesticide classification system consisting of eleven classes under provincial legislation as set out below.

- Class 1 pesticides are products intended for manufacturing purposes
- Class 2, 3 and 4 pesticides are restricted or commercial products
- Class 5 and 6 pesticides are domestic products intended for household use
- Class 7 pesticides are controlled sale products (domestic or restricted)
- Class 8 pesticides are domestic products that are banned for sale and use
- Class 9 pesticides are ingredients in products for use only under exceptions to the ban
- Class 10 pesticides are ingredients in products for the poisonous plant exception
- Class 11 pesticides are ingredients in products for cosmetic uses under the ban

Class 9 pesticides are ingredients in products that cannot be used in, on or over land unless otherwise excepted. The cosmetic pesticides ban does not impact structural or water exterminations only land exterminations.

Controlled Sale (Class 7) Products
Beginning April 22, 2011, controlled sale (Class 7) products will not be readily accessible on store shelves and consumers will need to ask vendor staff for assistance if purchasing these products. Licensed vendors must continue to provide consumers with a handout advising that certain uses are prohibited under the ban.

Domestic products in Class 7 have both cosmetic and non-cosmetic uses. Under the ban, the cosmetic uses of these products are not allowed. For example:

- Class 7 products cannot be used on driveways, patios, lawns or gardens to control weeds or other vegetation as these are cosmetic uses, but can be used to control plants poisonous to humans by touch (e.g., poison ivy, giant hogweed).
- Class 7 products cannot be used to control lawn or garden pests as these are cosmetic uses but can be used to control biting or stinging pests as directed on the label. Class 7 products can be used inside municipal buildings or immediately around the outside perimeter to control indoor pests as directed on the label.

Structural Pest Management
A full-time municipal employee may purchase and use Domestic products in Class 5, 6 or 7 for non-cosmetic purposes on municipal property to control structural pests indoors or around the perimeter of a building.

A municipal employee who holds a structural exterminator licence may purchase and use Class 2, 3, 4, 5, 6 or 7 products for a structural extermination.

Lawn and Garden Pest Management
A pesticide product that contains a Class 11 pesticide (includes biopesticides and certain lower risk pesticides) may be used for cosmetic purposes to manage weeds, insects and plant diseases on municipal property.

- A full-time municipal employee may only purchase and use Class 5 or 6 products that contain a Class 11 pesticide for a land extermination.
- A municipal employee who holds a landscape exterminator licence may purchase and use Class 2, 3, 4, 5 or 6 products containing a Class 11 pesticide for a land extermination.

Pesticide Use Notification for Class 11 Pesticides
Since municipal property includes places where children play, the use of Class

11 pesticides should be considered first if pesticides are to be used. A full-time municipal employee or a landscape licensed exterminator is required to post a non-residential area notice sign (Sign E) on non-residential area land to notify visitors and passers-by of pesticide use when using Class 11 pesticides in a land extermination.

Forestry Exception
Refer to the Technical Guidance Pesticides Act and Ontario Regulation 63/09 Forestry for further information on the forestry exception.

Health or Safety Exception
There is an exception to the ban for the use of Class 9 pesticides to protect public health or safety.

- A full-time municipal employee may purchase and use Domestic products in Class 5, 6 or 7 (that contain a Class 9 pesticide) to control wasps or mosquitoes or other pests that bite, sting, are venomous or spread diseases such as rodents.
- A municipal employee, who holds a landscape or an industrial vegetation licence may use a Class 2, 3, or 4 herbicide whose only pesticide ingredient is a Class 10 pesticide or a Class 5, 6 or 7 herbicide to manage plants that are poisonous to humans by touch, such as poison ivy, poison sumac, wild parsnip, stinging nettle and giant hogweed.

Health or Safety Exception – Public Works
There is an exception to the ban for the use of Class 9 pesticides on land that benefits a public works or other buildings and structures in order to protect health or safety. Refer to the Technical Guidance Pesticides Act and Ontario Regulation 63/09 Public Works for further information on the public works exception.

Specialty Turf Exception and the Specified Sports Fields Exception
A municipal employee holding a landscape exterminator licence may use a Class 9 pesticide to maintain specialty turf used for lawn bowling, cricket, lawn tennis or croquet if it is the same kind of turf that is used on golf course greens (e.g., creeping bent grass), subject to the conditions set out in Ontario Regulation 63/09.

A municipal employee holding a landscape exterminator licence may use a Class 9 pesticide to maintain a sports field for a national or international sporting event with the written approval of the Minister of the Environment. At no other time is there an exception to the ban for sports fields. See the Technical Guidance Pesticides Act and Ontario Regulation 63/09 Specialty Turf and Specified Sports Fields for more information.

Arboriculture Exception
There is an arboriculture exception to the use of a Class 9 pesticide to maintain the health of trees. The following uses are permitted under the arboriculture exception:

- A full-time municipal employee injecting a Class 5, 6 or 7 product that contains a Class 9 pesticide into a tree;
- A landscape licensed exterminator injecting a Class 2, 3, 4, 5, 6 or 7 product that contains a Class 9 pesticide into a tree;
- A landscape licensed exterminator applying any pesticide that contains a Class 9 pesticide directly to a tree, or a full-time municipal employee applying a Class 5, 6 or 7 product that contains a Class 9 pesticide directly to a tree, if the pesticide is used to maintain the health of the tree.

A person injecting a Class 2, 3 or 4 product that contains a Class 9 pesticide into a tree or a person applying any pesticide that contains a Class 9 pesticide directly to a tree for the purpose of maintaining the tree's health must first obtain a written opinion from a professional tree care specialist stating that the use of the pesticide, as part of an integrated pest management strategy, is necessary to maintain the health of the tree. **Note**: pests damaging the fruit of a tree would not impact the health of the tree.

In addition, any person required to provide advance written notice to the occupants of all residential properties that abut the area where the tree is located. Warning signs indicating that a Class 9 pesticide has been used must also be posted. **Note**: the tree is considered to be the application area.

This written notice must be provided one to seven days in advance of the application and includes:

- Date of the extermination
- Description of the application area
- Pest to be exterminated
- Name of the pesticide and its registration number
- Ingredient of the pesticide to be used
- Contact phone number of a representative of the person who will use the pesticide

Other Legislative Requirements Exception
An exception to the ban for the use of Class 9 pesticides is provided for the purpose of complying with a requirement under other federal or provincial legislation. For example, a weed inspector has authority to issue an order to destroy a noxious weed, which is negatively affecting agricultural land, as listed under Regulation 1096 made under the Weed Control Act. The written order will list the weed(s) to be controlled and the exact location to be treated. A person has the responsibility to ensure that, before he or she uses a Class 9 pesticide

for this excepted use, he or she is complying with the written order. Furthermore, this exception only applies if the use of a Class 9 pesticide is the only effective and practical means of complying with the order.

Natural Resources Exception

A municipal employee holding a landscape exterminator licence may use a Class 9 pesticide to manage, protect, establish or restore a natural resource provided that no other exception to the ban applies. For example, if there is a treed area of one hectare or greater used for forestry purposes, then the exception to the ban for forestry use applies and a forestry exterminator licence is required.

Class 9 pesticides must be used in accordance with integrated pest management (IPM) principles. IPM emphasizes pest prevention, and considers all options before deciding on the most effective, environmentally friendly and cost effective means of managing a pest problem and reducing reliance on pesticides.

A municipal employee holding a landscape exterminator licence or a landscape licensed exterminator contracted by a municipality who intends to use a Class 9 pesticide must apply to the appropriate Director of the MNR to receive a written opinion that states that the use of a Class 9 pesticide is necessary for one of the following purposes:

- To control an invasive species that may be detrimental to the health of a person, the environment or the economy of Ontario.
- To benefit a species of plant or animal native to Ontario, through the protection of the species or its habitat, or the establishment, restoration or management of the species' habitat.
- To protect or restore a rare ecosystem or its components.

The landscape licensed exterminator must carry a copy of the written opinion or have it readily available at the extermination site at all times during the extermination and must use the pesticide for the purpose set out in the written opinion. The MNR Director's written opinion must include the following information:

- The name of the person authorized to use the Class 9 pesticide
- Street address or legal description of the property that contains the application area
- The purpose for which the Class 9 pesticide is to be used
- The time period, not exceeding five years, during which the opinion is valid

For further information or to apply for a written opinion contact the local MNR district office or MNR's public contact centre at 1-800-667-1940.

Pesticide Use Notification for Class 9 and 10 Pesticides
A full-time municipal employee or a landscape licensed exterminator must post a non-residential area warning sign (Sign F) on non-residential area land to notify visitors and passers-by of pesticide use when using a Class 9 and 10 pesticide in a land extermination.

Compliance and Enforcement
To report non-compliance of pesticide use, please contact your MOE District Office during regular business hours. After business hours, call the MOE's Pollution Hotline at 1-866-MOE-TIPS (1-866-663-8477).

Visit the MOE's website for additional information on topics such as:
- Pesticide signage
- Pesticide classes and database
- Technical Guideline Pesticides Act and Ontario Regulation 63/09 Landscape Licensed Exterminators
- Technical Guideline Pesticides Act and Ontario Regulation 63/09 Public Works
- Technical Guideline Pesticides Act and Ontario Regulation 63/09 Forestry
- Technical Guideline Pesticides Act and Ontario Regulation 63/09 Specialty Turf and Specified Sports Fields
- Technical Guideline Pesticides Act and Ontario Regulation 63/09 Conservation Authorities
- Written Instructions Guide for IPM Certified Licensed Exterminators

A number of fact sheets and suggestions on caring for lawns and gardens are available on the MOE's website for specific audiences.

Questions about the cosmetic pesticides ban can be directed to the MOE's Public Information Centre at 1-800-565-4923 or 416-325-4000 (press 0 to talk to an information officer).

This technical guidance is for informational purposes only and should not be construed as legal advice. Interested parties are advised to refer to the Pesticides Act and O. Reg. 63/09 to address specific circumstances.

PIBS 7669